

**Agenda Of The Regular Meeting – Oversight Board to the Successor Agency to the
Redevelopment Agency of the City of National City
Council Chambers
Civic Center
1243 National City Boulevard
National City, California
Wednesday – October 21, 2015 – 3:00 P.M.**

Open To The Public

Please complete a request to speak form prior to the commencement of the meeting and submit it to the Oversight Board Secretary.

It is the intention of your National City Oversight Board to be receptive to your concerns in this community. Your participation in local government will assure a responsible and efficient City of National City. We invite you to bring to the attention of the Board Chairman any matter that you desire the National City Oversight Board to consider. We thank you for your presence and wish you to know that we appreciate your involvement.

ROLL CALL

Pledge of Allegiance to the Flag by Chairman Ron Morrison

Public Oral Communications (Three-Minute Time Limit)

NOTE: Pursuant to state law, items requiring National City Oversight Board action must be brought back on a subsequent National City Oversight Board Agenda unless they are of a demonstrated emergency or urgent nature.

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at (619) 336-4228 to request a disability-related modification or accommodation. Notification 24-hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**It Is Requested That All Cell Phones
And Pagers Be Turned Off During The Meetings**

OVERSIGHT BOARD ACTIONS

1. Approval of the Minutes of the Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency meeting held on September 16, 2015.
2. **Resolution of the Successor Agency to the Community Development** Commission as the National City Redevelopment Agency authorizing the Chairman to execute a Memorandum of Understanding between the Successor Agency and the City of National City regarding the distribution of anticipated settlement proceeds from the RSG Arbitration matter. (City Attorney/Successor Agency) (Reso 2015-11)

REPORTS

3. Update on Redevelopment Issues

ADJOURNMENT

Adjourn to the next Regular meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency scheduled on November 18, 2015 at 3:00 p.m. in Council Chambers, Civic Center.

**MINUTES OF THE SPECIAL MEETING OF THE OVERSIGHT BOARD TO THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF
THE CITY OF NATIONAL CITY**

SEPTEMBER 16, 2015

This Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency was called to order at 3:01 pm by Chairman Ron Morrison.

ROLL CALL

Board Members Present: Carson, Fellows, Morrison, Perri, Hentschke

Board Members Absent: Desrochers, McCarthy

OTHER STAFF PRESENT: Brad Raulston, Executive Director; Claudia Silva, Successor Agency Counsel; Janel Pehau, Accountant

PLEDGE OF ALLEGIANCE by Chairman Morrison

PRESENTATIONS: None

OVERSIGHT BOARD ACTIONS

- 1. SUBJECT:** Approval of the Minutes of the Regular Meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of National City Meeting held on August 19, 2015.

RECOMMENDATION: Approve minutes as presented.

ACTION: Motion by Perri, seconded by Fellows to approve the minutes of the Regular Meeting of the Oversight Board meeting held August 19, 2015.

Motion carried by the following vote:

Ayes: Fellows, Carson Perri, Morrison, Hentschke,

Absent: Desrochers, McCarthy

- 2. SUBJECT:** Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency approving the Recognized Obligation Payment Schedule (ROPS) for the Period January 1, 2016 through June 30, 2016 (ROPS 15-16B) (Successor Agency) (Reso 2015-10)

Item presented by Executive Director Brad Raulston and Accountant Janel Pehau.

RECOMMENDATION: Approve the Resolution (**Resolution 2015-10**).

ACTION: Motion by Hentschke, seconded by Carson to approve the Resolution.

Motion carried by the following vote:

Ayes: Fellows, Carson Perri, Morrison, Hentschke,

Absent: Desrochers, McCarthy

REPORTS

3. Update on Redevelopment Issues

Brad Raulston gave an update on the following:

Final version of LRPMP to be completed and forwarded to the Department of Finance on September 16th. Will report decision at the next Oversight Board meeting.

Janel Pehau and Claudia Silva gave an update on AB113 and SB107

ADJOURNMENT

The regular meeting was adjourned to the next Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency to be held on October 21, 2015 at 3:00 p.m., Council Chambers – National City Civic Center, California.

The meeting adjourned at 3:24 p.m.

Clerk

Secretary

The foregoing minutes were approved at the Regular Meeting of October 21, 2015.

Oversight Board Chairman

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO
THE COMMUNITY DEVELOPMENT COMMISSION
AS THE NATIONAL CITY REDEVELOPMENT AGENCY
AGENDA STATEMENT**

MEETING DATE: October 21, 2015

AGENDA ITEM NO. 2

ITEM TITLE: Resolution of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency authorizing the Chairman to execute a Memorandum of Understanding between the Successor Agency and the City of National City regarding the distribution of anticipated settlement proceeds from the RSG Arbitration matter.

PREPARED BY: Claudia G. Silva Brad Rauiston

DEPARTMENT: City Attorney and
Successor Agency

PHONE: Ext. 4222 Ext. 4256

APPROVED BY: 

EXPLANATION:

APPROVED BY: _____

Please see attached staff report.

FINANCIAL STATEMENT:

APPROVED: _____ **Finance**

ACCOUNT NO.

APPROVED: _____ **MIS**

N/A

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

BOARD / COMMISSION RECOMMENDATION:

Adopt proposed resolution.

ATTACHMENTS:

1. Staff Report
2. Memorandum of Understanding
3. Proposed OB Resolution

Staff Report

BACKGROUND

On February 20, 2007, the former Community Development Commission of the City of National City ("CDC") entered into an Agreement with Rosenow Spevacek Group, Inc. ("RSG") for the 2007 Redevelopment Plan Amendment. The 2007 Redevelopment Plan Amendment was prepared by RSG and eventually adopted in July of 2007. On or about September 2007, the 2007 Redevelopment Plan Amendment was challenged by the Community Youth Athletic Center (the "CYAC matter"). In addition to the reverse validation challenge to the 2007 Redevelopment Plan Amendment, the CYAC matter alleged violations of the public records act, due process, and takings. In April 2015, the trial court entered judgment in the CYAC matter, awarding fees in the amount of \$2,016,249.87.

In or about 2011, the City and CDC commenced arbitration proceedings seeking damages against RSG arising out of work performed by RSG pursuant to its contract with the CDC (the "Arbitration Proceedings"). In the Arbitration Proceedings, the City and CDC (now the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("SA")) alleged that RSG negligently performed its contractual obligations which resulted in compensatory damages. More specifically, the invalidation of the 2007 Redevelopment Plan Amendment (as well as the public record act violations) in the CYAC matter resulted in compensatory damages for the expended and awarded attorneys' fees amounting to over \$3,000,000; compensatory damages representing the loss of revenues which were dependent upon validation of the 2007 Redevelopment Plan, in the form of increased sales tax to the City (\$18,000,000), increased property tax/tax increment to the Successor Agency (\$12,640,000), and the value of developer-provided infrastructure improvements (\$2,500,000); and, the damages related to the additional expenses incurred by the SA related to increased bonding expenses (\$9,148,840) for the 2011 bonds.

During the course of the Arbitration Proceedings, extensive discovery was undertaken by the parties. The City and SA determined that RSG was insured with an aggregate policy limit of \$2,000,000, reduced by claim expenses. The Arbitration Proceedings defense costs (by RSG) have been paid from the insurance policy proceeds, thereby reducing the available policy limits to approximately \$1,800,000.

During the pendency of the Arbitration Proceedings, the parties engaged in two lengthy negotiations conducted at two mediation sessions over many months. The parties agreed to settle the matter for the available policy limits, contingent upon approval by the Oversight Board and the California Department of Finance ("DOF"). The Oversight Board approved the settlement. The DOF denied approval, stating the DOF needed documentation of the distribution of the estimated \$1,800,000 between the SA and the City.

Successor Agency staff have been engaging in discussions with DOF to obtain approval of the settlement so that the Arbitration Proceedings can conclude. Successor Agency staff has suggested to DOF that approval can include a requirement that distribution of the proceeds between the City and SA requires separate approval by DOF.

MEMORANDUM OF UNDERSTANDING REGARDING DISTRIBUTION OF SETTLEMENT PROCEEDS

While the conversation between staff and DOF are still occurring, staff has drafted a memorandum of understanding between the City and SA regarding the distribution of the settlement proceeds. The proposed memorandum of understanding ("MOU") distributes the settlement proceeds proportionally between the City and SA based on each party's respective percentage of damages, which are summarized above. The total approximate damage claimed by the SA is \$24,702,589 and the total approximate damage claimed by the City is \$20,777,074. This methodology results in the SA receiving 54% and the City receiving 45% of the balance of the settlement proceeds, after the attorneys' fees are paid.

RECOMMENDATION

Staff recommends authorizing the Chairman to execute the MOU.

These actions would require Oversight Board approval and DOF approval before they are final. The MOU contains these contingencies. This item is on the Oversight Board agenda for October 21, 2015.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NATIONAL CITY AND
THE SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT COMMISSION
AS THE NATIONAL CITY REDEVELOPMENT AGENCY**

This Memorandum of Understanding is entered into this 20th day of October, 2015, by and between the City of National City ("City") and the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("SA").

RECITALS

- A. In 2011, the CITY and SA commenced arbitration proceedings against Rosenow Spevacek Group, Inc. ("RSG") arising out of work performed by RSG pursuant to its contract with the Community Development Commission of the City of National City dated February 20, 2007 (the "Arbitration Proceedings") .
- B. In the Arbitration Proceedings, the CITY and SA alleged that RSG negligently performed its contractual obligations resulting in invalidation of the 2007 Redevelopment Plan Update in an action filed by Community Youth Athletic Center and others (collectively "CYAC"). The Superior Court's judgment invalidating the Redevelopment Plan in the underlying action was affirmed by the Court of Appeal in 2013.
- C. In the Arbitration Proceedings, the CITY and SA sought compensatory damages from RSG, representing (1) attorney fees totaling \$2,016,249 awarded in the underlying action; (2) attorney's fees totaling \$1,064,574 incurred by the CITY (\$277,074) and SA (\$787,500) in defending the underlying action; (3) attorney's fees exceeding \$110,000 to prosecute the Arbitration Proceedings; and (4) compensatory damages representing (a) loss of revenues caused by disruption of improvement and development within the City which was dependent upon validation of the Redevelopment Plan Amendment, in the form of increased sales tax revenue to the CITY (\$18,000,000), increased property tax/tax increment revenue to the SA (\$12,640,000), the value of developer-provided infrastructure improvements to the CITY (\$2,500,000), etc.; and (b) additional expenses incurred by the SA related to increased bonding expenses caused by the invalidation proceedings (\$9,148,840). The damages alleged were approximately \$24,702,589 for the SA and approximately \$20,777,074 for the CITY.

- D. Following a period of due diligence and formal discovery, it was determined that RSG was insured by National Union Fire Insurance Company of Pittsburgh, PA with aggregate policy limits of \$2,000,000.00 reduced by claims expenses. RSG denied liability for the claims and damages alleged by CITY and SA. RSG incurred legal fees and costs to defend the Arbitration Proceedings, which have been paid from the proceeds of the National Union Policy, thereby reducing the available policy limits. Due diligence and discovery by CITY and SA revealed that RSG is likely unable to satisfy a judgment or award in favor of CITY and SA substantially in excess of its available insurance policy limits.
- E. During the pendency of the Arbitration Proceedings, the Parties engaged in two lengthy negotiations conducted at two mediation sessions over many months. The Parties agreed to settle the disputes between them for approximately \$1,800,000 subject to the terms and conditions set forth in the settlement agreement, which was subject to California Department of Finance ("DOF") approval.
- F. The DOF sought review of the settlement agreement, and stated it could not approve the Oversight Board action regarding the settlement agreement until DOF receives documentation delineating the breakdown of the estimated \$1,800,000 between the SA and the City.
- G. This Memorandum of Understanding ("MOU") is intended to document the distribution of the estimated \$1,800,000 between the SA and the CITY.

NOW, THEREFORE, the SA and the CITY agree as follows:

- 1. The amount of proceeds received by RSG from the settlement of the RSG Arbitration Proceedings shall be distributed as follows:
 - a. Prior to distribution between the CITY and SA, the attorneys' fees due to Mazzearella and Mazzearella shall be paid, pursuant to and as obligated by the Agreement for Legal Services previously approved by DOF; and,
 - b. After the attorneys' fees due to Mazzearella and Mazzearella have been paid, the balance of the proceeds shall be distributed between the CITY and SA reflective of their damages described in the recitals above, as follows:
 - i. SA shall receive 54% of the balance remaining; and,
 - ii. CITY shall receive 46% of the balance remaining.

2. This MOU shall be effective upon approval by the parties, the Oversight Board, and the California Department of Finance.

IN WITNESS WHEREOF, the parties have executed this MOU on the date and year first written above.

CITY OF NATIONAL CITY

By: _____
Ron Morrison, Mayor

**SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT
COMMISSION AS THE NATIONAL CITY
REDEVELOPMENT AGENCY**

By: _____
Ron Morrison, Chairman

APPROVED AS TO FORM:

Claudia G. Silva
City Attorney

APPROVED AS TO FORM:

Claudia G. Silva
General Counsel

RESOLUTION NO. 2015 – 11

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY AUTHORIZING
THE CHAIRMAN TO EXECUTE A MEMORANDUM OF UNDERSTANDING
BETWEEN THE SUCCESSOR AGENCY AND THE CITY OF NATIONAL CITY
REGARDING THE DISTRIBUTION OF ANTICIPATED SETTLEMENT
PROCEEDS FROM THE RSG ARBITRATION MATTER

WHEREAS, on February 20, 2007, the former Community Development Commission of the City of National City ("CDC") entered into an Agreement with Rosenow Spevacek Group, Inc. ("RSG"), for the 2007 Redevelopment Plan Amendment; and

WHEREAS, the 2007 Redevelopment Plan Amendment was prepared by RSG and eventually adopted in July of 2007; and

WHEREAS, in September 2007, the 2007 Redevelopment Plan Amendment was challenged by the Community Youth Athletic Center (the "CYAC Matter"); and

WHEREAS, in April 2015, the trial court entered judgment in the CYAC Matter, awarding fees to CYAC in the amount of \$2,016,249.87; and

WHEREAS, in 2011, the City and CDC (now the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("SA")) commenced arbitration proceedings seeking damages against RSG arising out of work performed by RSG pursuant to its contract with the CDC (the "Arbitration Proceedings"); and

WHEREAS, in the Arbitration Proceedings, the City and SA alleged that RSG negligently performed its contractual obligations resulting in compensatory damages; and

WHEREAS, the parties agreed in the Arbitration Proceedings to settle the matter for a net recovery after settlement consistent with RSG's insurance policy limits (the "Recovery"), estimated at \$1,800,000, contingent upon approval by the Oversight Board and the California Department of Finance ("DOF"); and

WHEREAS, the Oversight Board approved the settlement, but the DOF denied approval because the DOF required documentation of the distribution of the Recovery among and between the SA and the City; and

WHEREAS, the proposed memorandum of understanding between the City and SA ("MOU") addresses DOF's concern and distributes the Recovery proportionally between the City and SA based on each party's respective percentage of damages, with the total approximate damage claimed by the SA at \$24,702,589, and the total approximate damage claimed by the City at \$20,777,074. This methodology results in the SA receiving 54% and the City receiving 45% of the balance of the settlement proceeds, after the attorneys' fees are paid; and

October 21, 2015

WHEREAS, the MOU must be approved by both the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Oversight Board") and the California Department of Finance prior to being effective.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency as follows:

Section 1. The foregoing recitals are true and correct, and are a substantive part of this Resolution.

Section 2. The Oversight Board has reviewed and hereby approves the MOU providing for the distribution of the Recovery, which Recovery was secured *via* settlement of the CYAC Matter initiated against RSG through the Arbitration Proceedings.

Section 3. The MOU, a true and correct copy of which shall be maintained as a public record by the City Clerk, provides for a distribution of fifty-four percent (54%) of the Recovery to the SA, and forty-six percent (46%) of the Recovery to the City.

Section 4. The Chairman of the SA, or his designee, is hereby authorized and directed to execute the MOU and take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board.

Section 5. The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

Section 6. Pursuant to California Health and Safety Code Section 34179(h), the State of California Department of Finance may review Oversight Board action; therefore, this Resolution shall be effective on the date five (5) business days after its adoption, absent and pending any request for review by the State of California Department of Finance.

--- SIGNATURE PAGE TO FOLLOW ---

NOW THEREFORE, BE IT RESOLVED that the foregoing resolution was duly and regularly adopted at a regular meeting of the Oversight Board for the Successor Agency to the Community Development Commission as the National City Redevelopment Agency held on the 21st day of October 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ron Morrison, Chairman

ATTEST:

Brad Raulston, Executive Director
Secretary to the Oversight Board

APPROVED AS TO FORM:

Oversight Board Counsel
Edward Z. Kotkin, Esq.
Law Offices of Edward Z. Kotkin